IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 7457 of 2005

Between:

M.Veeresh, S/o.M.Nagaiah,
R/o.Railway Qtrs.No.183/2, Near Railway Institute, Bellampalli,
Adilabad District.

..... PETITIONER

AND

1. The State of A.P. represented by its Principal Secretary,

Medical & Health Department, Secretariat Buildings,
Hyderabad.
2. The Medical Officer, Mandal Primary Health Centre, Vemur,

Vemur Mandal, Guntur District.

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ or order or direction more particularly one in the nature of writ of mandamus declaring the action of the Respondents in not granting compensation to the petitioner is illegal, arbitrary and violative of Article 21 of Constitution of India and consequently direct the respondents to maintain the daughter of the petitioner till she attains the age of majority and pass such other or further orders as this Hon'ble court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.J.M.NAIDU

Counsel for the Respondents 1 & 2: G.P. FOR MEDICAL HEALTH &

FAMILY WELFARE

The Court at the stage of admission made the following

ORDER:

The case, in brief, of the petitioner is that after his wife underwent tubectomy operation in the sterilization center of Vemur, Guntur District, after begetting two male children, he sought for and was granted additional increment as per rules, but, due to the negligence of the Doctor in conducting the tubectomy operation, his wife conceived and delivered a female baby on 26-03-2004 at Kalary hospital, Pandurangapet, Tenali, and since his wife conceived the third child only due to the medical negligence of the doctor, who conducted the sterilization operation on his wife, the Government is liable to pay compensation to him for bringing up the third child.

(2) Learned counsel for the petitioner placed strong reliance on ***State of Haryana & Ors v. Smt. Santra*** and also ***J.K. Traders v. State of A.P.*** in support of his contention that petitioner is entitled to the relief claimed.

(3) As seen from ***Smt. Santra***'s case (1st supra) relied on by the learned counsel for the petitioner, Smt. Santra, who was the victim in that case, filed a suit for recovery of Rs.2,00,000/- as damages for medical negligence and that suit was decreed for Rs.54,000/- by the trial Court, after it came to a conclusion, on the basis of the evidence adduced before it, that there was negligence on the part of the doctor who performed her operation. In ***J.K. Traders*** case (2nd supra) it is held that the victim, whose fundamental rights are violated, has an option to claim damages by invoking either the constitutional remedy or remedy under common law.

(4) In my considered view, the above two decisions have no application for deciding the maintainability of this petition, because no fundamental right of the petitioner is violated for the petitioner to rely on ***J.K. Traders*** case (2 supra) and as unless petitioner establishes, by adducing reliable evidence that his wife underwent the sterilization operation, on an assurance that she would not conceive in future, question of passing an order as in ***Smt. Santras*** case (1 supra) does not arise, more so because the person who underwent the operation is not the petitioner, and is said to be the husband of that woman. The right of the petitioner, who is the husband of a woman, to claim maintenance for the child for the alleged negligence of the Doctor who performed the tubectomy operation, is also not stated. In fact the petitioner who

admittedly is enjoying the benefit of additional increment on the ground of his wife undergoing tubectomy operation, can have no grievance.

(5) In these circumstances, the remedy if any of the petitioner, is to file a suit, but not writ petition. Hence, the writ petition is dismissed. No costs.

C.Y. SOMAYAJULU, J

Date: 25th April, 2005

lsn

To

1. The Principal Secretary, The State of A.P.

Medical & Health Department, Secretariat Buildings,
Hyderabad.

2. The Medical Officer, Mandal Primary Health Centre, Vemur,

Vemur Mandal, Guntur District.

3. Two CCs to G.P. for Medical Health & Family Welfare, High Court Buildings,

Hyderabad (OUT).

4 Two CD copies.